

Message Text

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ACTION STR-05

INFO OCT-01 STRE-00 ISO-00 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05
SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 SOE-02
OMB-01 DOE-11 EUR-12 IO-13 /113 W
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P 051700Z JAN 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 4536
INFO AMEMBASSY BRUSSELS

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USMTN USEEC

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A
TAGS: MTN, ETRD, EEC
SUBJECT: EC PROPOSAL ON LEVELS OF OBLIGATION IN THE
MTN DRAFT STANDARDS CODE

REF: (A) STATE 311067; (B) GENEVA 12609; (C) GENEVA 11557

1. U.S. MTN DEL (WALLAR) MET WITH EC REPS (DUGIMONT, MACDONALD) JANUARY 5 AND HAD A BRIEF PRELIMINARY DISCUSSION ON THE EC'S PROPOSAL REGARDING THE LEVEL OF OBLIGATIONS IN THE MTN DRAFT STANDARDS CODE (REF (B)). U.S. DEL REITERATED THE WELL-KNOWN U.S. POSITION PER REF (A), CITING PARAGRAPH 11 OF THE REPORT OF GROUP 3 ON STANDARDS AND STATING THAT THE LEVELS OF OBLIGATION QUESTION IS ONLY ONE OF SEVERAL FACTORS TO BE ASSESSED
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IN DETERMINING THE BALANCE OF THE CODE'S PROVISIONS. FURTHERMORE, THE DETERMINATION OF SUCH A BALANCE CAN ONLY BE MADE AFTER THE CODE HAS BEEN FINALIZED.

2. ON PARAGRAPH 1(C) OF THE EC'S PROPOSAL, THE U.S. QUERIED AS TO WHAT "PROVISIONS OF THE CODE" THE EC HAD IN MIND. MACDONALD INDICATED THAT THE LAST PHRASE

OF PARAGRAPH 1(C) SHOULD READ AS FOLLOWS "...FULFILLED, UNDER THE DISPUTE SETTLEMENT PROVISIONS OF THE CODE BEGIN BRACKETS TO BE AGREED END BRACKETS." U.S. DEL POINTED OUT THAT, IN VIEW OF THE MAJOR SIGNIFICANCE OF THE EC PROPOSAL AND ITS EXPLICIT LINK TO THE DISPUTE SETTLEMENT PROVISIONS (WHICH HAVE NOT YET BEEN DISCUSSED IN DETAIL) THE U.S. WOULD NEED A BETTER UNDERSTANDING OF THE EC IDEAS ON DISPUTE SETTLEMENT BEFORE FURTHER CONSIDERATION COULD BE GIVEN TO ITS PROPOSAL. DUGIMONT APPRECIATED THIS POINT, BUT SAID THAT ALTHOUGH THE EC HAS DEVELOPED CERTAIN IDEAS IN THIS AREA, HE WAS NOT PREPARED TO PRESENT THEM AT THIS TIME. U.S. DEL RECALLED THAT DISPUTE SETTLEMENT WAS SUGGESTED BY GATT CHAIRMAN WILLIAMS AS A TOPIC TO BE DISCUSSED AT THE NEXT INFORMAL STANDARDS MEETING (REF (C)) WHICH SHOULD GIVE THE EC THE OPPORTUNITY TO PRESENT ITS IDEAS. DUGIMONT SAID THAT AT THAT TIME THEY MIGHT BE IN A POSITION TO DO SO.

3. U.S. DEL ASKED ABOUT THE DRAFTING IMPLICATIONS OF THE EC PROPOSAL. MACDONALD ACKNOWLEDGED THAT THE WORDING OF THE SUGGESTION WAS SUCH AS TO PERMIT THE RETENTION OF THE "BEST ENDEAVORS" CLAUSES THROUGHOUT THE CODE, RECOGNIZING THAT THE FIRST LEVEL OF OBLIGATION FOR FEDERAL GOVERNMENTS VIS-A-VIS STANDARDS ACTIVITIES OF LOCAL GOVERNMENTS WAS NOT FEASIBLE FOR SOME COUNTRIES. THUS, THE EC HELD OPEN THE POSSIBILITIES OF EITHER LIMITED OFFICIAL USE

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INSERTING A NEW, SEPARATE SECTION WHICH WOULD INCORPORATE THE EC IDEA, OR INCORPORATING THE NOTION OF FIRST LEVEL OF RESPONSIBILITY THROUGHOUT VARIOUS PARTS OF THE CODE.

4. IN CLARIFYING CERTAIN TECHNICAL ASPECTS, MACDONALD SAID HE WOULD CHECK AS TO WHETHER THE PHRASE "QUALITY ASSURANCE" SHOULD BE INCLUDED IN PARAGRAPH 1. IN PARAGRAPH 1(B) THE TERM "BODIES" REFERS TO GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS. IN PARAGRAPH 1(C) THE PHRASE REGARDING OBLIGATIONS OF THE CODE NOT BEING FULFILLED IS CONSTRUED BY THE EC AS THE SAME AS THE CONCEPT OF NULLIFICATION AND IMPAIRMENT OF THE CODE'S BENEFITS ALREADY INCLUDED IN THE DRAFT CODE.

5. DUGIMONT AFFIRMED THE EC INTENTION OF PRESENTING THE PROPOSAL, WITH MINOR TECHNICAL MODIFICATIONS, TO THE GATT SECRETARIAT NEXT WEEK FOR GENERAL DISTRIBUTION.

6. REACTION OF OTHER DELS: AFTER THE DISCUSSION WITH THE EC, U.S. DEL INFORMALLY CONTACTED OTHER DELEGATIONS FOR THEIR PRELIMINARY REACTIONS TO THE EC PROPOSAL. THE CANADIAN DEL (DENIS) AGREED WITH THE U.S. OBSERVATION

THAT THE EC PROPOSAL STOPS SHORT BY NOT SPECIFYING
WHAT HAPPENS AFTER A MATTER ENVISAGED IN PARAGRAPH 1(C)
OF THE EC PROPOSAL IS RAISED UNDER A DISPUTE SETTLEMENT
PROCEEDING. DENIS SAID THAT HE IS EXPLORING WITH OTTAWA
A TWO-PART DISCUSSION OF THE EC PROPOSAL: ONE PART
REGARDING LOCAL GOVERNMENTS, THE OTHER PERTAINING TO
PRIVATE ORGANIZATIONS. WITH RESPECT TO LOCAL GOVERN-
MENTS, DENIS INDICATED THAT CANADA COULD NOT ACCEPT ANY
MORE THAN A "BEST ENDEAVORS" OBLIGATION IN AN INTER-
NATIONAL TREATY. IN PRACTICAL TERMS, HOWEVER, THE RESULT
OF THIS OBLIGATION COULD BE THE SAME AS IF AN ABSOLUTE
LEVEL OF OBLIGATION WERE TAKEN. FOR EXAMPLE, IF A LOCAL
GOVERNMENT TOOK AN ACTION WHICH FRUSTRATED THE OBJECTIVES

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USMTN/USEEC

STR FOR ACTION

STR PASS CODEL

OF THE CODE AND THE FEDERAL GOVERNMENT WAS UNABLE TO
CHANGE THE PRACTICE, THE ISSUE COULD BE RAISED BEFORE
THE STANDARDS COMMITTEE. IN DENIS' OPINION, THIS SITU-
ATION IS SIMILAR TO THAT WHICH ALREADY EXISTS IF A GATT
CP REQUESTED ARTICLE XXIII PROCEEDINGS WITH RESPECT TO
OBLIGATIONS CONTAINED IN GATT ARTICLE XXIV:12. THE
CRITICAL ISSUE IS WHETHER THE FOCAL POINT FOR DISPUTE
IS THE "BEST ENDEAVORS" OBLIGATION OR THE RESULTS (OR

LACK OF RESULTS) OF THESE ENDEAVORS. IN RESPONSE TO THIS OBSERVATION, ACCORDING TO DENIS, THE EC SAID THAT CHANGES TO SECTION 3 OF THE DRAFT STANDARDS CODE MIGHT NOT BE NECESSARY BUT THEIR IDEA COULD BE INSERTED IN THE ENFORCEMENT OR APPLICATION SECTION OF THE CODE. UNDER THE SECOND PART OF HIS APPROACH REGARDING PRIVATE ORGANIZATIONS, DENIS' PERSONAL OPINION IS THAT IT IS NOT LIMITED OFFICIAL USE

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NECESSARY TO HAVE ALL OF THE ACTIVITIES OF ALL PRIVATE STANDARDS ORGANIZATIONS COVERED BY THE CODE. EFFECTIVE ENFORCEMENT OF THE CODE'S OBLIGATIONS ON A WIDE RANGE OF PRIVATE STANDARDS ACTIVITIES IS TOO AMBITIOUS AND UNNECESSARY TO ACHIEVE THE CODE'S OBJECTIVES. IN DENIS' VIEW, THE ONLY IMPORTANT AREA OF PRIVATE STANDARDS ACTIVITIES IS WHEN A GOVERNMENT EMPLOYS A PRIVATE STANDARD AS A QUASI-MANDATORY STANDARD. WHEN A GOVERNMENT "HIDES BEHIND" A PRIVATE STANDARD AND FRUSTRATES THE OBJECTIVES OF THE CODE, THE MATTER COULD BE DEALT WITH ADEQUATELY IN THE ENFORCEMENT PROVISIONS. DENIS IS PURSUING THIS IDEA WITH OTTAWA AND MIGHT HAVE A CONCRETE PROPOSAL ALONG THESE LINES AT THE NEXT INFORMAL STANDARDS MEETING.

7. AUSTRALIAN DEL (SPENCER) HAD NO OFFICIAL GUIDANCE ON THE EC'S PROPOSAL, BUT WAS SKEPTICAL THAT THE PROPOSAL COULD BE DRAFTED IN LEGAL TERMS TO AVOID AT LEAST A DEFACTO FIRST LEVEL OF OBLIGATION BY FEDERAL GOVERNMENTS VIS-A-VIS LOCAL GOVERNMENT ACTIVITIES. NORDICS (STALBERG) AND JAPANESE (TAMORI) DELS WILL BE CONTACTED NEXT WEEK AFTER THEY RETURN FROM HOLIDAY.

8. DRAFTED BY WALLAR. CULBERT

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